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## Hearing Voices

*Category: Custody & Access*

The answer, according to UBC Professor Dr. Edward Everyone was sitting on the edge of their courtroom seats. Intently listening as the Supreme Court Judge continued announcing her reasons for judgment. I know I was. This family law case had been particularly complicated, bitterly contested, and emotionally traumatic for all of the concerned parties, both parents, friends, family and lawyers alike. A case with a long and acrimonious history.

One of the most profoundly affected by the proceedings was the Judge herself. She was the Judge who had decided almost three years ago the terms of custody and access for the nine year old child. Now she had to decide whether to order the mother of a reluctant 12 year old to compel her daughter to exercise access with her step father. The Judge also had to decide whether to jail the mother for contempt of court, for failing to comply with the terms of access.

Let me briefly digress. Both parents in this case were loving and capable people who suffered the same problems with communication and respect as do most divorced parents. The step father was described by the Judge as a caring and supportive participant in the child's life for most of her young life.

But it was clearly evident that the 12 year old was not prepared to simply go along with the same Court access ordered almost three years ago. She had grown in age and maturity and felt that her mother was more sensitive to her needs and interests. In support of her daughter the mother had invested in the preparation of a Views of a Child Report which had confirmed that the child's views were indeed genuine and independent.

Unfortunately, because the step father was not prepared to participate in its preparation, despite the invitation to do so, in the eyes of the Court the Report was flawed and of little evidentiary weight.

Undeterred, the mother enlisted the support of an organization called "Justice for Girls" which acts as an advocate for young women, often disenfranchised

residents of the Downtown East Side.

Through the association a pro-bono lawyer was retained to represent the child. The purpose was to provide an independent voice for the child, to ensure that the views and wishes of the child would be accurately presented to the Court. Not unexpectedly, the affidavit prepared by the child's lawyer confirmed and collaborated what everyone already knew. The child did not want the Court, or anyone else, to dictate to her when and where she saw her step father.

On the other hand, not unreasonably, Supreme Court Family Orders are intended to be respected and observed by all the parties. Non-compliance is an extremely serious offence and can result in the offender being fined or imprisoned. It can also result in the Court taking custody of a child away from a parent who it believes is being willfully disobedient of a Court Order.

Back to our story. Reluctantly, the Judge decided to allow the child, with one minor adjustment, to decide the terms of her own access. It was a decision which was in the words of the Judge one of the unhappiest decisions she had ever made. Unhappy as the Judge may have been, in my opinion, it was the right and only choice, and one which took great courage to make. My hat's off to this Judge for listening to the voice of this child. Let's all try to listen carefully to the voices of our own children. 